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August 22, 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and eleven (11) copies of its opposition to a petition of leave to amend and related amendment filed by David A. Ringer on August 11, 1994.

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: 
Stephen T. Yelverton

Enclosure

B:CATON.155

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 22 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction
Permit for a New FM Station,
Channel 280A, Westerville,
Ohio

)
)
) MM Docket No. 93-107

)
) File Nos. BPH-911230MA

)
) through

)
) BPH-911231MB
)

To: The Review Board

OPPOSITION TO PETITION OF RINGER
FOR LEAVE TO AMEND

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: _____

Stephen T. Yelverton
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August 22, 1994

B:CATON.155

OPPOSITION TO PETITION OF RINGER FOR LEAVE TO AMEND

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.294 (b) of the Commission's Rules, hereby submits this opposition to petition for leave to amend. On August 11, 1994, David A. Ringer ("Ringer") filed a petition for leave to amend and amendment. Therein, Ringer seeks to supplement a May 9, 1994, amendment to his application. In opposition to the petition for leave to amend and amendment, ORA submits the following comments.

In his May 9, 1994, amendment, Ringer revised his cost estimates to reflect substantial additional costs resulting from a new tower site. However, as noted in ORA's May 18, 1994, opposition, Ringer failed to attempt to demonstrate that he had sufficient funds to cover the increased cost estimates. Such a demonstration of the availability of the necessary additional funds is required under Commission policy in order for the amendment to be accepted. See, Radio Representatives, Inc., 6 FCC Rcd 6995 (1991); Pontchartrain Broadcasting, Inc. v. FCC, Case No. 93-1291, p. 5, decided Feb. 11, 1994.

Ringer not only failed to demonstrate the availability of the necessary additional funds, but also failed to disclose that he had committed to funding an FM broadcast application for Athens, Ohio, filed on April 11, 1994. Therein, Ringer pledged \$352,520 of his own personal money to fund that application. Under established Commission policy, he must demonstrate the availability of sufficient funds to cover both the Westerville and Athens applications. Breeze Broadcasting Co., Ltd., 8 FCC Rcd 1835, 1837, para. 12 (Rev. Bd. 1993). Thus, the revised cost estimates should have reflected this additional cost.

In his August 11, 1994, amendment, Ringer belatedly reports the pendency of the Athens application. He also concedes that the \$352,520 cost estimates for that application

should have been included in his May 9, 1994, amendment to the Westerville application.

In an attached declaration to the August 11, 1994, amendment, Ringer claims that he has \$663,514 in marketable securities and \$250,000 in certificate of deposits to cover his total costs of \$782,744 for the Westerville and Athens proposals. In support of his financial qualifications, Ringer submits a personal financial statement, dated April 30, 1993 (this statement was submitted with an opposition pleading also filed on August 11, 1994).

Ringer's August 11, 1994, petition for leave to amend must be denied and the amendment rejected. It is late-filed and "good cause" has not been demonstrated for acceptance. As conceded by Ringer, the information should have been submitted in his May 9, 1994, amendment.

Ringer's excuse for not timely submitting the information about the Athens application is disingenuous and is a non-sequitur. He contends that the information was inadvertently not submitted because he was not required to make a divestiture pledge in the Westerville proceeding and that, in any event, the cost of the Athens proposal would have no effect on his financial qualifications in this proceeding.

ORA never contended that Ringer was required to have made a divestiture pledge or to report the Athens application apart from the May 9, 1994, amendment revising his cost estimates. What ORA contended was that Commission policy requires Ringer to account for in his cost estimates the costs of all pending application proposals. However, Ringer admittedly failed to account for the Athens proposal in his May 9, 1994, amendment revising his cost estimates.

Having admitted to failing to comply with a fundamental Commission requirement in his May 9, 1994, amendment, Ringer must demonstrate "good cause" for the late-filing of his revised cost estimates. See, Section 73.3522 (b); Erwin O'Connor Broadcasting Co., 22 FCC2d 142, 143 (Rev. Bd. 1970); Texas Communications, 7 FCC Rcd 3186, 3187, para. 8, n. 5 (1992). However, Ringer declined to do so and merely seeks to file the August 11, 1994, amendment solely for informational purposes, pursuant to Section 1.65. Of course, if the August 11, 1994, amendment is only accepted pursuant to Section 1.65, it could not then be used to supplement or to bolster the May 9, 1994, amendment. Ringer has conceded that the acceptance of that amendment is subject to the "good cause" requirements. See, Ringer's May 9, 1994, petition for leave to amend, pp. 3-4, para. 4.

Ringer's August 11, 1994, amendment must also be rejected because it utterly fails to demonstrate that he has at least \$782,744 in net liquid assets. See, Radio Representatives, Inc.; Pontchartrain Broadcasting, Inc. In support of his financial qualifications, Ringer submitted an April 1993 financial statement. However, that statement is out-of-date by over year and thus is not probative of Ringer's net liquid assets as of the time of filing the Athens application or at the time of the May 9, 1994, amendment.

Ringer's conclusory claim that there has been no substantial change in his in his net liquid assets since April 1993 can not be accepted because it is undocumented. Radio Representatives, Inc.; Pontchartrain Broadcasting, Inc. Moreover, that claim is incredible on its face and thus can not be accepted. Most of the marketable securities listed in the April 1993 statement, which are a substantial portion of his liquid assets, are long-term bonds. It is a matter of common public knowledge, which the Board can take official

notice, that the value of such long-term bonds has decreased substantially since April 1993 because of a rise in interest rates. Indeed, Ringer's glib claim of no substantial change in his net liquid assets raises serious questions of misrepresentation and lack of candor.

Even if the April 1993 financial statement was up-to-date, it would still be inadequate. Another substantial part of the assets listed are notes receivable, real estate, and closely-held private businesses. No appraisals were submitted as to their fair market value. Texas Communications, 6 FCC Rcd 5191, 5193, para. 14 (1991), appraisal are required to be submitted to document fair market value.

It should be noted that the April 1993 financial statement has never been subject to discovery or tested under the crucible of cross-examination. It is nothing more than a self-serving depiction by Ringer, which includes many non-liquid assets with no readily ascertainable fair market value.

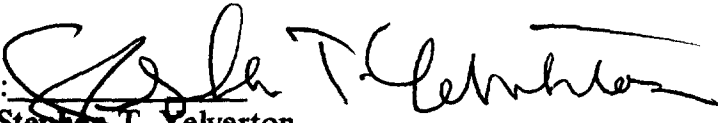
Another problem with the April 1993 financial statement is that many of the bank certificates of deposit which are listed do not expire until September 1996. Ringer failed to disclose the amount of the penalty for premature withdrawal of these certificates.

In conclusion, Ringer's August 11, 1994, amendment can not be accepted because it would require the specification of new issues and additional hearings. See, Section 73.3522(a); Erwin O'Connor Broadcasting Co. The amendment raises questions of misrepresentation and lack of candor because of the failure to initially disclose the cost estimates for the Athens proposal. Texas Communications, 7 FCC Rcd at 3187, para. 11. Moreover, the amendment also raises more questions than it answers as to Ringer's current financial qualifications.

WHEREFORE, in view of the foregoing, ORA requests that the Review Board deny Ringer's petition for leave to amend and reject his amendment.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 
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August 22, 1994

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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 22nd day of August, 1994, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Opposition to Petition of Ringer for Leave to Amend" to the following:

Joseph A. Marino, Chairman*
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Federal Communications Commission
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Washington, D.C. 20554

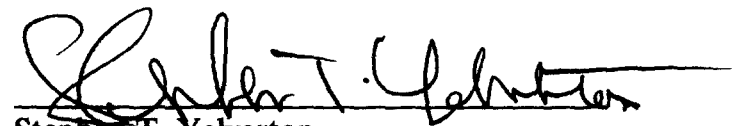
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